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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re ALEJANDRO M. et al, Persons
Coming Under the Juvenile Court Law.

B221473

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK79313)

Plaintiff and Respondent,

v.

ALEJANDRO M. Sr.,

Defendant and Appellant.

APPEAL from orders of the Los Angeles County Superior Court. Terry Truong,
Juvenile Court Referee. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, and Judith A. Luby, Deputy County Counsel, for Respondent.

A father challenges jurisdictional and dispositional orders entered by the juvenile dependency court on the ground that the orders are not supported by substantial evidence. Although we agree that one of the dependency court's findings is not supported by substantial evidence, we affirm the court's orders because the record otherwise discloses sufficient factual bases for the court's jurisdiction.

FACTS

Alejandro M. Sr. (Father) and Ana V. (Mother) are the parents of Alejandro M., Jr., born in July 2006, and Luna M., born in October 2007. Mother is also the parent of three older children: Junior Z. (17), Daisy Z. (15) and Joanna Z. (12). The appeal before us today involves Father's claims regarding Alejandro and Luna. The family came to the attention of the Department of Children and Family Services (DCFS) in June 2009 when it received a referral reporting that Father was emotionally abusing all five children, and that he had physically attacked Junior approximately one year earlier.

A. The First Referral

On June 26, 2009, a DCFS case social worker (CSW) interviewed Mother about the referral. Mother reported that she and Father had been separated since July 4, 2007, when he became intoxicated, struggled with Mother over their car keys, and grabbed her by the hair. When Junior tried to separate the two adults, Father punched Junior "a couple of times on the side of his face," and then "pulled out a knife and began to swing the knife" at Junior and other relatives. Father's brother eventually led Father away from the family home. Mother reported that there were "numerous" incidents of domestic violence during the three years that she lived with Father. Junior, Daisy and Joanna all reported to the CSW that Father was "constantly verbally aggressive" toward Mother, and that they had seen him "pushing" Mother and "pulling her hair." Mother reported that a divorce/custody case began in August 2008, and that, in November 2008, the family law court awarded her sole legal and physical custody of Alejandro and Luna. DCFS did not file a petition at the time it investigated the June 2009 referral.

B. The Second Referral

On August 1, 2009, DCFS received another referral alleging abuse of the children by Father. At that time, Mother reported that Alejandro had returned from a visit with father with the smell of beer on his (Alejandro's) breath. Alejandro had said that Father gave him beer.¹ Mother also reported that she had seen marks on Alejandro after two prior visits with Father, and that Alejandro said that he got the marks when Father had spanked him. In response to Mother's report, the CSW instructed Mother to take both Alejandro and Luna to a doctor for a medical exam. Later in August, a doctor reported to DCFS that an examination of Alejandro and Luna "ruled out physical abuse." DCFS did not file a petition at the time of its investigation into the August 2009 referral.

C. The Third Referral

On September 17, 2009, Mother contacted the CSW again, this time reporting that Daisy (then almost 15 years old) had disclosed that Father had sexually abused her over a period of about three years, starting when she was 11 ½ years old. Mother had contacted the police, and filed a report. The CSW interviewed Mother on September 18. Mother reported that, after Alejandro returned from visiting with Father, Alejandro began saying inappropriate comments in Spanish, such as "my daddy has a big penis". Alejandro also began trying to grab Daisy's breasts. A day or so later, Daisy told Mother that she (Daisy) was worried about Alejandro because Father had sexually abused her. When Mother tried to question Daisy, Daisy refused to discuss anything more. After talking to Mother, the CSW interviewed Daisy at her school. Daisy provided an explicit description of three incidents during which Father fondled her breasts and put his finger into her vagina. The CSW arranged for medical exams for Daisy, Alejandro and Luna. On September 22, a detective from the Montebello Police Department talked to Daisy. The detective subsequently told DCFS that he believed Daisy was credible, and that sexual abuse did occur. On October 1, the CSW received medical reports which could "neither confirm or negate sexual abuse" of the children. The report also indicated that

¹ Alejandro would have just turned three years old at the time of the reported incident.

Daisy had reported sexual abuse to a nurse practitioner. On October 6, Father told the CSW that he was “not willing to participate” in a voluntary family maintenance contract.

D. The DCFS Petition and Hearing

On October 9, 2009, DCFS detained Alejandro and Luna, and filed a petition on their behalf. (See Welf. & Inst. Code, § 300.)² During the course of a contested hearing that ended on December 23, 2009, the juvenile dependency court received DCFS’s initial detention report and subsequent interim reports into evidence. The court heard testimony from Junior and Daisy. At the conclusion of the hearing, the court sustained seven separate allegations under sections 300 (b)(1), (b)(2), (b)(3), (b)(4), (d)(1), (j)(1) and (j)(2). More specifically, the dependency court found that Father had sexually abused half-sibling Daisy Z. by attempting to kiss, fondle and digitally penetrate her, thereby placing Alejandro and Luna at risk of harm; that the history of domestic violence by Father and to some extent Mother endangered the children’s physical safety placing them at risk of harm; that Father’s abuse of Junior Z. by striking Junior in the face and Mother’s inability to protect Junior, placed the children at risk of harm; and that Father’s history of alcohol abuse placed the children at risk of harm. The court sustained two additional allegations based upon the same sexual abuse of Daisy Z. The court sustained the final allegation based upon the same striking of Junior.

Father filed a timely notice of appeal.

DISCUSSION

Father argues that each of the dependency court’s findings is without evidentiary support and must be reversed. As detailed below, we disagree with all but one of Father’s arguments.

I. Standard of Review

Jurisdictional and dispositional orders rendered by the juvenile dependency court are reviewed under the substantial evidence test. We must view the evidence in a light most favorable to the court’s determinations, resolve all conflicts in the evidence in favor

² All further section references are to the Welfare & Institutions Code.

of its determinations, and refrain from weighing the evidence anew. We must also refrain from re-evaluating the credibility of the witnesses. (*In re H. G.* (2006) 146 Cal.App.4th 1, 12-13.) We are mindful, however, that substantial evidence is not any evidence; it must be such that a reasonable mind would accept it as adequate to support a conclusion. The evidence must be reasonable in nature and of solid value. (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.)

II. Risk of Physical Harm

Father contends the juvenile dependency court's jurisdictional orders must be reversed because the court's finding under section 300, *subdivisions (b)(3) and (j)(2)*, that he posed a risk of physical harm to Alejandro and Luna is not supported by substantial evidence. We disagree.

Father does not dispute that he punched Junior and swung a knife at him. Rather, Father argues that regardless of the truth of the evidence showing that had physically attacked Junior, there is no evidence showing that he posed a risk of harm to Alejandro or Luna. Father's argument is not persuasive. Our state's dependency law jurisprudence teaches that the physical abuse of one sibling may, under certain circumstances, justify the court's jurisdiction over other siblings. (See, e.g., *In re Edward C.* (1981) 126 Cal.App.3d 193, 203; and *In re Rubisela E.* (2000) 85 Cal.App.4th 177, 198.) In short, a dependency court may reasonably infer that an adult who inflicts physical abuse on one sibling is likely to inflict physical harm on another sibling when the first is not present. We are satisfied the record shows the need for the court's intervention to protect all of the children in Mother's home, including Alejandro and Luna.

The evidence in the record discloses that: (1) Father punched and swung a knife at Junior; (2) all of the children had been exposed to domestic violence; (3) all of the children observed constant aggressive behavior by Father against Mother; and, (4) Father had sexually abused one of the children. The record also supports a conclusion that Father's aggressiveness increased with his abuse of alcohol (§ 300.2), and that, as of the time of the jurisdictional hearing, he had not acted to address his alcohol abuse problems.

We acknowledge Father's argument that the attack on Junior was "remote in time," and that Father has not regularly resided in the family home for some period of years. We also acknowledge that there was no direct showing that he had ever acted violently toward the two youngest children, but we find these arguments go to the weight of the evidence. They are insufficient to overcome the substantial evidence test standard of review on appeal. As a result, we are not convinced that the juvenile dependency court's "risk of harm" finding as to Alejandro and Luna lacked substantial evidence.

III. Inability to Provide Regular Care

Father contends the juvenile dependency court's jurisdictional orders must be reversed because the court's finding under section 300, *subdivision (b)(4)*, that his abuse of alcohol rendered him unable to provide care for Alejandro and Luna is not supported by substantial evidence. We agree, the evidence is insufficient, but are not convinced that vacating this finding has any effect on the court's jurisdictional and dispositional orders.

The evidence in the record shows that Father attacked Junior while Father was intoxicated, that his violence towards Mother escalated while he was intoxicated and that Father has a conviction for driving under the influence. There is no evidence, however, that Father's alcohol abuse has interfered with his ability to provide care for Alejandro and Luna. Fairly examined, the record is silent on Father's history as a caregiver or provider for his two children. For this reason, we agree with Father that the court's finding on his inability to provide regular care should be vacated. At the same time, however, we recognize that the dependency court's jurisdiction may rest on a single ground (§ 300; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127), and, for this reason, reversal of the court's jurisdictional and dispositional orders is not required. (*Ibid.*)³

³ The dependency court's order requiring alcohol counseling is supported by the evidence presented showing that Father's violence escalated with alcohol.

IV. Domestic Violence

Father contends the juvenile dependency court's jurisdictional orders must be reversed because the court's finding under section 300, *subdivision (b)(2)*, that domestic violence between Mother and Father posed a risk of physical and/or emotional harm to Alejandro and Luna is not supported by substantial evidence. We disagree.

All three of the older children reported that Father constantly acted aggressively toward Mother. Father does not dispute that he attacked Junior during an altercation between Father and Mother. Harassment between the parents continued after they had separated. The evidence, coupled with caselaw, supports the court's conclusion that the presence of domestic violence around children causes a risk of harm sufficient to justify the intervention of the dependency court. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194; *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562.)

V. Sexual Abuse

Father contends the juvenile dependency court's jurisdictional orders must be reversed because the court's finding under section 300, *subdivisions (b)(1), (d)(1) and (j)(1)*, that Alejandro and Luna were at risk of sexual abuse by Father is not supported by substantial evidence. We disagree.

As our starting point, we note that Father does not challenge the court's finding that he sexually abused Daisy Z. Rather, according to Father's opening brief, he contends the court's finding that Alejandro and Luna were at risk of sexual abuse is not supported by an evidentiary foundation. In Father's words: "[T]here was no evidence [that he] would molest his own biological children" We disagree.

With regard to Alejandro, we agree with the dependency court that "something happened" to the three-year-old child to cause him to start talking about the size of an adult's penis, and to start grabbing his teenage sister's breasts. Father suggests that Alejandro merely may have observed sexual behavior between Father and his new girlfriend. Even assuming Father's argument, we reject Father's implicit proposition that performing sex acts within view of a three-year-old child is not sufficient to support a reasonable inference that Alejandro was at risk. The trial court reasonably inferred that

“something” emotionally abusive of a sexual nature occurred in Father’s home. A single, isolated, instantaneous incident of a child walking in on adults having sex does not cause a child to begin talking about big penises, and grabbing a teenager’s breasts. At a minimum, the evidence supports a conclusion that Father failed to understand or establish acceptable boundaries for sexual behavior in front of a toddler.

With respect to Luna, we find the evidence of sexual abuse of her half-sister, Daisy, to be sufficient to support a reasonable inference that Luna was at risk. When a parent displays aberrant sexual behavior with a child, a younger child who is approaching the age of the victimized child may be found at risk of similar aberrant behavior. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1347.) Father’s attempt to analogize this case to *In re Rubisela E.*, *supra*, fails. We do not have before us a situation where an adult sexually molested only the female sibling, with no additional evidence that a male child might be the victim of molestation. (See, e.g., *In re Rubisela E.*, *supra*, 85 Cal.App.4th at p. 198.) Although Daisy was 11 years old when Father first made sexual advances, and Luna is years younger, we cannot say that the dependency court’s finding of a risk was unreasonable. Unlike *In re Rubisela E.*, *supra*, the court found “something” also happened with Daisy’s younger half-brother, Alejandro. In addition, Luna was demonstrably quieter when she returned from her visits with Father. The dependency court did not act unreasonably in intervening on Luna’s behalf and Alejandro’s behalf where Father’s behavior raised a reasonable concern of a risk of sexual misconduct against every minor, regardless of age, to whom he had access. (*In re Karen R.* (2001) 95 Cal.App.4th 84, 90-91.)

DISPOSITION

The juvenile dependency court's orders entered December 23, 2009, are affirmed.

O'CONNELL, J. *

We concur:

RUBIN, Acting P. J.

GRIMES, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.